Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 06/07/01.
   b. The request was received on 05/08/02.

II. EXHIBITS

1. Requestor: Exhibit I
   a. Initial Submission of TWCC-60
      1. UB-92s
      2. EOB(s)
   b. Additional documentation received on 06/17/02
      1. Position Statement
      2. Example EOB(s) from other carriers
      3. Medical Records
   c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit II:
   a. Response to a Request for Dispute Resolution
   b. SOAH decisions
   c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 06/26/02. Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 07/02/02. The response from the insurance carrier was received in the Division on 07/09/02. Based on 133.307 (i) the insurance carrier's response is timely.

4. Notice of Medical Dispute is reflected as Exhibit #III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: Letter dated 06/12/02
"(Carrier) has unfairly reduced our bill when other workers' compensation carriers have established that our charges are fair and reasonable because they are paying 85%-100% of our billed charges. Also group insurance companies are allowing 100% of our billed charges. Enclosed are examples of bills for the same type of treatment of other patients and their insurance companies [sic] interpretation of fair and reasonable as shown by the amounts paid."

2. Respondent: Letter dated 07/09/02
"The Carrier, in determining what constitutes a 'fair and reasonable rate' did consider the Medicare, PPO and HMO payments, and reviewed the Commission's own guidelines for acute care. Acute Care Guidelines state that $1118.00 is a valid reimbursement for a full day of inpatient care, or approximately 24 hours. By definition, outpatient or ambulatory surgical services are those that require less than 90 minutes anesthesia time and less that [sic] four hours of recovery. This means the patient receives care from the facility for ¼th of the time being in an inpatient setting for a full day, and the facility is paid at the **equivalent of** a one day inpatient stay. **The Acute Care Fee Guidelines were used as a consideration in determining reimbursement-However, this does not mean that inpatient guidelines were applied to this service…**.While the S.O.A.H. decisions are not binding on the Commission , the ALJ's do point out that cost effectiveness must be proven, and that 'other carriers willingness to pay at higher rates' does not prove the provider's fees are effective cost control."

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 06/07/01.

2. The amount in dispute is $3,402.92.

3. This dispute is based on a fair and reasonable denial.

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate…"

Section 413.011 (b) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The provider has submitted EOBs from other carriers as examples of "fair and reasonable" reimbursement for same or similar services. These EOBs were paid at varying percentages of the billed amount. Regardless of the carrier's methodology, response, or lack thereof, the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011 (b) of the Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement. No further reimbursement is recommended.

The above Findings and Decision are hereby issued this 15th day of August 2002.

Carolyn Ollar, RN, BA
Medical Dispute Resolution Officer
Medical Review Division
CO/co